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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

COLVIN & SON, LLC, and STONE CABIN
RANCH, LLC,

Plaintiffs,

V.

DEB HAALAND IN HER OFFICIAL CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF THE INTERIOR; TRACY STONE-MANNING IN HER OFFICIAL CAPACITY AS DIRECTOR OF THE BUREAU OF LAND MANAGEMENT; JON RABY IN HIS OFFICIAL CAPACITY AS THE NEVADA STATE DIRECTOR OF THE BUREAU OF LAND MANAGEMENT; DOUG FURTADO IN HIS OFFICIAL CAPACITY AS DISTRICT MANAGER FOR THE BATTLE MOUNTAIN DISTRICT, NEVADA, BUREAU OF LAND MANAGEMENT; and PERRY B. WICKHAM IN HIS OFFICIAL CAPACITY AS THE FIELD MANAGER FOR THE TONOPAH FIELD OFFICE, BATTLE MOUNTAIN DISTRICT, NEVADA, BUREAU OF LAND MANAGEMENT.

Defendants.

Case No.

COMPLAINT FOR JUDICIAL REVIEW OF AGENCY DECISION RELATING TO WILD HORSES

111

1 Plaintiffs, *Colvin & Son, LLC*, and *Stone Cabin Ranch, LLC*, do hereby allege:

2 1. **Preliminary Statement.** Within Defendants exercise of discretion under the *Wild*
 3 *and Free Roaming Horses & Burro Act*, 16 U.S.C. § 1331, et seq., Defendants made two (2)
 4 determinations. First, Defendants determined an overpopulation of wild horses existed upon the
 5 public lands within the Stone Cabin Complex (“SCC” or “Complex”), inclusive of the Stone
 6 Cabin (wild horse) Herd Management Area (“Stone Cabin HMA”) and the Saulsbury (wild horse)
 7 Herd Management Area (“Saulsbury HMA”), including some adjacent areas outside of such
 8 HMAs within the Ralston, Hunts Canyon, and Monitor Allotments; all within the State of Nevada.
 9 Second, given the first determination, Defendants determined that action was necessary to remove
 10 the excess wild horses within the SCC per a wild horse management plan.

11 2. Based upon its determinations, Defendants considered and assessed Alternatives in
 12 the Stone Cabin Complex Wild Horse Gather Plan, Environmental Assessment, DOI-BLM-NV-
 13 B020-2023-0005-EA, dated April 11, 2023 (“2023 FEA”),¹ AR-81:SC_6182-6387,² as to the
 14 action necessary to remove the excess wild horses within the SCC. Specifically, Alternative A –
 15 Proposed Action in the 2023 FEA involved three (3) distinct actions over the 10-year life of the
 16 wild horse management plan; namely: (1) Initially, gather and remove excess wild horses to
 17 achieve low AML within the proposed gather area either in a single first gather or with a follow-
 18 up gather(s) if all excess animals are not captured and removed in a single initial gather; (2) Apply
 19 population growth suppression methods, including administering vaccine initial doses and booster
 20 doses to gathered and released horses over multiple gathers, to slow population growth and
 21 maintain the wild horse population within Appropriate Management Levels (“AML”); and (3)

22

23 ¹ See also Stone Cabin Complex Wild Horse Gather Plan, Preliminary Environmental
 24 Assessment, DOI-BLM-NV-B020-2023-0005-EA, dated October 25, 2022 (“2022 DEA”), AR-
 49:SC_1642-1791.

25 ² The “AR-Document__” and then page number, referenced herein are to the Defendants’
 26 Administrative Record filed before the U.S. Department of the Interior, Office of Hearings and
 Appeals, Board of Land Appeals (“IBLA”).

1 Conduct additional/maintenance gathers after the initial gather(s) to bring wild horse population
2 back to low AML if the population grows to again exceed AML during the 10-year plan life after
3 low AML was achieved.

4 3. Based upon its 2023 FEA, Defendants issued their Decision Record dated April 11,
5 2023, AR-79:SC_6174-6177 (“2023 DR”), their Finding of No Significant Impact dated April 11,
6 2023, AR-80:SC_6178-6181 (“2023 FONSI”), and their 2023 FEA, AR-81:SC_6182-6387. The
7 2023 DR: (1) selected and implemented Alternative A - Proposed Action Alternative in the 2023
8 FEA, AR-79:SC_6175, *see also* AR-81:SC_6193-99; and (2) did not explicitly include any
9 *conditions to delay implementation* of the 2023 DR, *see also* AR-79:SC_6174-77, *see also* AR-
10 80:SC_6178-81 (wherein the 2023 FONSI also did not explicitly include any *conditions*). The DR
11 was placed in immediate effect, AR-79:SC_6175.

12 4. Notwithstanding the Defendants’ Determinations, the 2023 FEA, the 2023 FONSI,
13 and the 2023 DR, Defendants did not and have not, even as of the filing of this Complaint,
14 actually implemented the 2023 DR. The lack of implementation of the 2023 DR is a violation of
15 the *Wild and Free Roaming Horses & Burro Act*, 16 U.S.C. § 1331, et seq., causing harm to the
16 Plaintiffs, to the public lands within the SCC, to wildlife species and their habitats, and to the wild
17 horses themselves.

18 5. Given the foregoing paragraphs, including all of the other allegations in this
19 Complaint, the Plaintiffs file this Complaint for judicial review of the 2023 DR to hold unlawful
20 any conditions (except for on-site conditions) which allow Defendants to defer (and continue to
21 defer) implementation of the 2023 DR, and to compel immediate implementation of the 2023 DR,
22 as required by the *Wild and Free Roaming Horses & Burro Act*, 16 U.S.C. § 1331, et seq.

23 6. **Jurisdiction.** Jurisdiction is proper in this Court under 28 U.S.C. § 1331 (Federal
24 question) because this civil action arises under the Constitution, laws, or treaties of the United
25 States, including the *Wild and Free Roaming Horses & Burro Act*, 16 U.S.C. § 1331, et seq. An
26 actual, justiciable controversy exists between the parties, and requested relief, inclusive of

1 preliminary and permanent injunctive relief, is therefore proper under 5 U.S.C. §§ 702, 704, 705,
 2 706(2) (*Administrative Procedure Act*). The federal government has waived sovereign immunity
 3 in this action pursuant to 5 U.S.C. § 702.

4 7. **Venue.** The basis of venue is: (a) 28 U.S.C. § 1391(b)(2) (A civil action, where a
 5 “substantial part” of the claim arose); (b) 28 U.S.C. § 1391(e)(1)(A) (A civil action involving an
 6 officer or employee of the United States, where “a defendant in the action resides”); and (c)
 7 Nevada Federal District Court LR IA 1-6 and LR IA 1-8.

8 8. **Plaintiffs.** Plaintiff *Colvin & Son, LLC* (“Colvin LLC”) “is a limited liability
 9 company in Nevada and authorized to do business in Nevada. Colvin [LLC] was formed over
 10 twenty-two (22) years ago on August 18, 2000, when its original member, Tom Colvin, Jr.
 11 owned private land and water rights and held a BLM Grazing Permit in the Stone Cabin and
 12 Wagon Johnnie Allotments ..., and held a USFS Grazing Permit in the Little Fish Lake and
 13 Wagon Johnnie Allotments, Austin-Tonopah Ranger District, Humboldt-Toiyabe National
 14 Forest, Nevada. Tom Colvin, Jr., and now Colvin & Son, LLC, have continued to operate a
 15 yearlong, cow-calf livestock operation within the same area. This operation is inclusive of
 16 private land, water rights, livestock, a BLM Grazing Permit, a USFS Grazing Permit, machinery,
 17 equipment, and incidental assets to sustain such operation. This livestock operation has been
 18 dependent upon public land use and national forest system land use for a long time and has
 19 consistently cooperated with the federal land management agencies to achieve applicable range
 20 land health standards and land use / forest plan objectives.” AR-46:SC_1437-38.

21 9. “Colvin [LLC] owns private land within the administrative boundary of the BLM
 22 Stone Cabin Allotment which has historically served as the base property for BLM and USFS
 23 Grazing Permits, and which has also historically served as the base of operations for its livestock
 24 operation. Colvin [LLC] also owns *other* private land within the administrative boundary of the
 25 BLM Stone Cabin, BLM Wagon Johnnie Allotment, USFS Little Fish Lake Allotment, USFS
 26 Wagon Johnnie Allotment, and USFS McKinney Allotment, including some associated water

1 rights upon the private land, public lands, and national forest system lands.” AR-46:SC_1438.

2 10. “Colvin [LLC] holds a BLM Grazing Permit which authorizes it to graze
 3 livestock upon the public lands within the Stone Cabin and Wagon Johnnie Allotments. Colvin
 4 [LLC] also holds a USFS Grazing Permit which authorizes it to graze livestock upon the Little
 5 Fish Lake and Wagon Johnnie Allotments.” *Id.*

6 11. Plaintiff *Stone Cabin Ranch, LLC* (“Stone Cabin LLC”) is a limited liability
 7 company in Nevada and authorized to do business in Nevada. Stone Cabin LLC was formed on
 8 April 10, 2006, though the family that formed Stone Cabin LLC and the family that still owns
 9 and operates Stone Cabin LLC have generationally owned and operated a yearlong, cow-calf
 10 livestock operation since 1883. It remains one of the oldest, continuous family run cow-calf
 11 livestock operations in the State of Nevada, with the current owners and operators consisting of
 12 fourth and fifth generation family members. This operation is inclusive of private land, water
 13 rights, livestock, a BLM Grazing Permit, a USFS Grazing Permit, machinery, equipment, and
 14 incidental assets to sustain such operation. This livestock operation has been dependent upon
 15 public land use and national forest system land use since 1883, and this livestock operation has
 16 consistently cooperated with the federal land management agencies, including taking up to 56%
 17 suspension of animal unit months (“AUMS”) on the allotments to achieve applicable range land
 18 health standards and land use/forest plan objectives. *See* AR-46:SC_1421; AR-75:SC_4940; AR-
 19 78:SC_6156.

20 12. Stone Cabin LLC holds a BLM Grazing Permit which authorizes it to graze
 21 livestock upon the public lands within Stone Cabin, Hunts Canyon, and Willow Creek
 22 Allotments. *See* AR-46:SC_1421. Stone Cabin LLC also holds a USFS Grazing Permit which
 23 authorizes grazing livestock upon the USFS Monitor Complex, USFS Stone Cabin, and USFS
 24 Saulsbury Allotments which border the BLM Stone Cabin, BLM Hunts, and BLM Willow Creek
 25 Allotments.

26 13. **Defendants.** Defendant, DEB HAALAND IN HER OFFICIAL CAPACITY AS

1 SECRETARY OF THE UNITED STATES DEPARTMENT OF THE INTERIOR (“Haaland”),
 2 is believed to maintain an office at 1849 C Street, N.W., Washington DC 20240, and manages
 3 the public lands and the wild horses upon the public lands in, among others, the State of Nevada,
 4 including the associated funding appropriated to the U.S. Forest Service (“USFS”) and
 5 transferred to the “Department of the Interior, Bureau of Land Management, for removal,
 6 preparation, and adoption of excess wild horses from National Forest System lands” as per
 7 Public Law 117-328, 136 Stat.4806 (12-29-2022) (which covers the fiscal year ending
 8 September 30, 2023),³ and as per Public Law 118-15, __ Stat. __, H.R. 5860-3 (1-3-2023)
 9 (which covers the fiscal year ending September 30, 2024).

10 14. Defendant, TRACY STONE-MANNING IN HER OFFICIAL CAPACITY AS
 11 DIRECTOR OF THE BUREAU OF LAND MANAGEMENT (“Stone-Manning”), is believed to
 12 maintain an office at 1849 C Street N.W., Washington DC 20240, and manages the public lands
 13 and the wild horses upon the public lands in, among others, the State of Nevada, including the
 14 associated funding appropriated to the USFS and transferred to United States Department of the
 15 Interior (“USDI”)-BLM as related to removal of excess wild horses as noted in paragraph 13
 16 herein. The “Bureau of Land Management” is herein referred to as “BLM.”

17 15. Defendant, JON RABY IN HIS OFFICIAL CAPACITY AS THE NEVADA
 18 STATE DIRECTOR OF THE BUREAU OF LAND MANAGEMENT (“Raby”), is believed to
 19 maintain an office at 1340 Financial Blvd., Reno, Nevada 89502, and manages the public lands
 20 and the wild horses upon the public lands in the State of Nevada, including the associated
 21 funding appropriated to the USFS and transferred to USDI-BLM as related to removal of excess
 22 wild horses as noted in paragraph 13 herein.

23

 24 ³ Beyond the funds appropriated to the USFS and transferred to the USDI-BLM, the
 25 *Consolidated Appropriations Act, 2023*, Public Law 117-328 (December 29, 2022), appropriated
 26 to the U.S. Department of the Interior the sum of approximately \$148 million for the “wild horse
 and burro program.” Public Law 117-328, 136 Stat. 4760. This authorization also included
 authority to the Department of Interior to “enter into multiyear cooperative agreements with
 nonprofit organizations and other appropriate entities … for the long-term care and maintenance
 of excess wild free roaming horses.” Public Law 117-328, 136 Stat. 4786.

1 16. Defendant, DOUG FURTADO IN HIS OFFICIAL CAPACITY AS DISTRICT
2 MANAGER FOR THE BATTLE MOUNTAIN DISTRICT, NEVADA, BUREAU OF LAND
3 MANAGEMENT (“Furtado”), is believed to maintain an office at 50 Bastian Road, Battle
4 Mountain, Nevada 89820, and manages the public lands and wild horses upon the public lands in
5 the Battle Mountain District, State of Nevada, including the associated funding appropriated to
6 the USFS and transferred to USDI-BLM as related to removal of excess wild horses as noted in
7 paragraph 13 herein.

8 17. Defendant, PERRY B. WICKHAM IN HIS OFFICIAL CAPACITY AS THE
9 FIELD MANAGER FOR THE TONOPAH FIELD OFFICE, BATTLE MOUNTAIN
10 DISTRICT, NEVADA, BUREAU OF LAND MANAGEMENT (“Wickham”), is believed to
11 maintain an office at 1553 South Main Street, Tonopah, Nevada 89049, and manages the public
12 lands and the wild horses upon the public lands in the Tonopah Field Office, Battle Mountain
13 District, State of Nevada, including the associated funding appropriated to the USFS and
14 transferred to USDI-BLM as related to removal of excess wild horses as noted in paragraph 13
15 herein.

16 18. **Statement of Facts.** Stone Cabin Complex: The Stone Cabin Complex (“SCC” or
17 “Complex”) is located approximately 30 miles east of Tonopah, Nye County, Nevada. AR-
18 81:SC_6185.

19 19. The SCC is a subpart of the Tonopah Field Office, Battle Mountain District,
20 Nevada, Bureau of Land Management (“BLM”), as illustrated in Map 1 in the 2023 FEA. AR-
21 81:SC_6185, 87; *see also* AR-81:SC_6267 (Map of Adjacent HMAs and Wild Horse Territories
22 (“WHTs”) relative to SCC); *Id.* at 6268 (Map of Sage Grouse Habitat within SCC); *Id.* at 6269
23 (Map of Water Sources within SCC); *Id.* at 6270 (Map of WSAs and LWCs within SCC).

24 20. The SCC is inclusive of the Stone Cabin (wild horse) Herd Management Area
25 (“Stone Cabin HMA”) and the Saulsbury (wild horse) Herd Management Area (“Saulsbury
26 HMA”), including some adjacent areas outside of such HMAs within the Ralston, Hunts Canyon,

1 and Monitor Allotments, as also illustrated in Map 1 in the 2023 FEA. AR-81:SC_6185. 87; *see*
 2 *also* AR-46:SC_1440 (Map of Ralston, Hunts Canyon, Stone Cabin, and Wilson Creek
 3 Allotments). This entire area includes a total of 886,181 acres, of which the Stone Cabin HMA
 4 includes 407,705 acres, the Saulsbury HMA includes 135,018 acres, and the remainder (non-
 5 HMAs) includes 343,457 acres. AR-81:SC_6185-86. *Compare* AR-81:SC_6188 (wherein Table
 6 1 within the 2023 FEA provides different acreage figures for the Stone Cabin and Saulsbury
 7 HMAs).

8 21. The Stone Cabin HMA is home to a herd of wild horses. The “Appropriate
 9 Management Level” (“AML”) was determined by the Defendants to be a low of 218 and a high
 10 of 364 head of wild horses for this HMA. AR-81:SC_6188.

11 22. The Saulsbury HMA is also home to a herd of wild horses. The AML was
 12 determined by the Defendants to be a low of 24 to a high of 40 head of wild horses for this
 13 HMA. *Id.*

14 23. An adjacent non-HMA, containing 343,457 acres (39% of the SCC), is also the
 15 non-home of other wild horses. This non-HMA should have *no* wild horses, whose presence is
 16 also adversely affecting rangeland health, ranch economics, hunting opportunities, and wildlife
 17 populations and habitats therein.

18 24. Notwithstanding such AML levels, the number of wild horses within Stone Cabin
 19 HMA and Saulsbury HMA have exceeded the prescribed AMLs over time. AR-81:SC_6188
 20 (Table 1).⁴ The 2023 FEA reports that as of the Fall 2022, the “Estimated population” of wild
 21 horses in the Stone Cabin HMA was 651 head, or 179% above (high) AML, and in the Saulsbury
 22
 23

24 ⁴ It should be noted that this exceedance existed even after an emergency wild horse gather
 25 within the Stone Cabin HMA between September 1, 2021, and October 26, 2021, wherein 321
 26 head of wild horses were gathered and removed from such HMA. AR-38:SC_1307-11 (BLM’s
 Decision Record for 2011 Emergency Gather); AR-39:SC_1314-18 (BLM’s DNA for 2011
 Emergency Gather); AR-40:SC_1319-20 (BLM’s Press Release as to 2011 Emergency Gather);
 AR-41:SC_1321-26 (BLM’s Gather Report as to 2011 Emergency Gather).

1 HMA was 280 head, or 700% above (high) AML. *Id.* This exceedance was consistent with the
 2 wild horse population data collected by the Defendants between 2013 and 2022.⁵

3 25. Defendants collected monitoring data between 2013 and 2022 to assess the
 4 impacts upon the public lands and public land resources, including as related to wild horses,
 5 within the Stone Cabin and Willow Creek Allotments (inclusive of the Stone Cabin HMA) and
 6 within the Hunts Canyon and Ralston Allotments (inclusive of the Saulsbury HMA).⁶ This data
 7 demonstrated grave resource conditions and wild horse conditions, including other adverse
 8 impacts, as summarized by the Defendants in the 2023 FEA. *See* AR-81:SC_6189.⁷

9 ⁵ *See* AR-9:SC_0768 (2013); AR-14:SC_0792, 0793 (2014); AR-17:SC_0830 (2016); AR-
 10 20:SC_1007 (2017); AR-22:SC_1038 (2018); AR-24:SC_1065 (2019); AR-32:SC_1262, AR-
 11 37:SC_1305 (2021); AR-45:SC_1419 (2022).

12 ⁶ *See* AR-13:SC_0788-790 (2013, 2014), AR-12:SC_0784-786 (2014); AR-15:SC_0794-826
 13 (2015, 2016, 2017); AR-18:SC_0831-875 (2014, 2016); AR-19:SC_0876-1005 (2016, 2017,
 14 2018); AR-21:SC_1009-1037 (2017); AR-27:SC_1077-1096 (2020); AR-28:SC_1097-1137
 15 (2020); AR-33:SC_1264-1269 (2021); AR-42:SC_1328-1342 (2022); AR-43:SC_1343-1417
 16 (2022); *see also* AR-8:SC_0663-766 (BLM's Field Reports for 2012 and 2013); AR-
 17 35:SC_1287-1300 (BLM's Field Report for 2021, inclusive of graphic pictures of adverse wild
 18 horse conditions); AR-78:SC_6167-73 (Memorandum dated 4-29-2021 by *Intermountain Range
 Consultants* as to "End of Season Utilization" within Stone Cabin, Hunts Canyon, Willow Creek
 19 Allotments in 2017-2022).

20 ⁷ The 2023 FEA stated at AR-81:SC_6189 that: (1) "Stone Cabin Complex estimated populations
 21 far exceed the established AML range for the project area (Table 1)." (2) "Moderate and heavy
 22 utilization is evident on key forage species within the complex, which, if sustained over time,
 23 interferes with vegetative regrowth and results in long term changes to rangeland health due to
 24 the loss of native vegetation." (3) "Monitoring and historical information indicate that future
 25 emergency removals will be necessary as a result of lack of water and/or forage if excess animals
 26 are not timely removed to bring the population back to AML." (4) "Wild horses are residing
 outside of HMA boundaries on public lands that are not managed for wild horses (documented
 during aerial inventories (2006-2017) and 2021 resource flights). Animals leaving the Complex
 boundary and remaining outside of HMAs is indicative of insufficient habitat within the
 Complex for the current population of horses." (5) "The overpopulation of wild horses is
 resulting in vehicle collisions with wild horses residing within and outside the HMA on Access
 Road 504 (Rocket Road) as vehicles travel to or from the Tonopah Test and Training Range,
 causing a public safety issue and risk of injury or death for the excess wild horses." (6) "Water
 sources on public lands that are available to wild horses are very limited in both HMAs, and
 riparian degradation is occurring due to the overpopulation of wild horses using these areas." (7)
 "Monitoring confirms the AMLs of 364 (Stone Cabin HMA) and 40 (Saulsbury HMA) must not
 be exceeded to achieve progress towards the Standards for Rangeland Health in accordance with
 the Mojave-Southern Great Basin RAC." AR-81:SC_6189.

1 26. Based upon the prescribed AMLs, the excess wild horse numbers, the monitoring
 2 data, and other information, the Defendants determined an excess of wild horses existed in
 3 accordance with the *Wild Horse Free-Roaming Horse and Burro Act* of 1971, as amended
 4 (“WFRHBA”).⁸ Specifically, the Defendants “**determined that at least 689 excess wild horses**
 5 above the low end of AML are currently present in the Stone Cabin Complex,” adding that
 6 “[c]ensus flights have confirmed that additional wild horses reside outside of HMA boundaries
 7 in the area identified as the Stone Cabin Complex gather area,” and further adding that “[t]hese
 8 **excess wild horses need to be removed in order to achieve the established AML, restore a**
 9 **thriving natural ecological balance (TNEB) and prevent further degradation of rangeland**
 10 **resources.**” AR-81:SC_6189 (emphasis added).

11 27. Plaintiffs’ Preliminary Comments to BLM: On April 27, 2022, Plaintiffs, through
 12 another, commented to the Defendant, Field Manager of the Tonopah Field Office, regarding the
 13 monitoring of the public lands within, among others, the Stone Cabin, Hunts Canyon, and
 14 Wilson Creek Allotments. This monitoring occurred in coordination and cooperation with BLM,
 15 as well as the USFS, wherein such monitoring disclosed “wild horse numbers grossly in excess
 16 of AML levels, as prescribed by the 1997 Tonopah RMP-ROD,” and that this “excess has
 17 adversely implicated utilization levels and in some places the underlying rangeland condition.”
 18 AR-46:SC_1421.

19 28. As to grossly excess wild horse numbers, Defendants’ own wild horse population
 20 data **as of March 1, 2022**, ratified the foregoing statement by the Plaintiffs in paragraph (27),
 21 noting that **2022 Estimated Wild Horse Population** for the Stone Cabin HMA was 650 head of
 22 wild horses or 237% above (high) AML, and for the Saulsbury HMA was 337 head of wild
 23 horses or 703% above (high) AML. AR-45:SC_1419.

24
 25

 26 ⁸ Defendants confirmed in the 2023 FEA that “16 USC 1333 (b)(2) directs the secretary to make
 an excess determination based on the basis of all information currently available, and does not
 include language that would allow for a delay of this immediate removal in order to collect any
 type of information.” AR-81:SC_6209.

1 29. In addition, Defendants' own wild horse population data **as of March 1, 2023**,
 2 ratified the foregoing statement by the Plaintiffs in paragraphs (27) and (28), noting that **2023**
 3 **Estimated Wild Horse Population** for the Stone Cabin HMA was 435 head of wild horses or
 4 120% above (high) AML,⁹ and for the Saulsbury HMA was 388 head of wild horses or 970%
 5 above (high) AML.

6 30. As to the adverse utilization levels, the utilization data in November 2021, ratified
 7 the foregoing statement by the Plaintiffs in paragraph (27).¹⁰

8 31. Plaintiffs' preliminary comments added that based upon such monitoring:
 9 "[Plaintiffs] ... demand that the BLM ... forthwith return such allotments to the prescribed AML
 10 levels. ... [Plaintiffs] ... contend that, due to the year-round use by excess wild horses, the gather
 11 should not be anything less than full reduction to low AML (or lower), and due to on-the-ground
 12

13 ⁹ It should be noted that, while there still existed an excess of (high) AML as of March 1, 2023,
 14 there was an observed decrease in the excess within the Stone Cabin HMA between 2022 (with
 15 650 head of wild horses) and 2023 (with 435 head of wild horses). This decrease was likely due
 16 to the wild horses roaming beyond the boundary of the Stone Cabin HMA due to "insufficient
 17 habitat," as the Defendants stated was occurring in the 2023 FEA. *See also* AR-106:SC_6682-
 18 6690 (wherein a "Genetic Analysis for the Saulsbury HMA" confirmed the mixing of wild
 19 horses within the area, stating at SC_6685 that "Genetic variability of this herd is high and likely
 20 **due to mixing with nearby herds.**" (emphasis added)); AR-81:SC_6189; AR-108:SC_6702-
 21 6724 (wherein a "Genetic Analysis for the North Stone Cabin" confirmed the mixing of wild
 22 horses within the area, stating at SC_6705 that "Genetic variability of this herd is quite high but
 23 there is a high percentage of variation that is at risk. The levels of allelic diversity are higher than
 24 seen in 2010 but the percentage of alleles at risk is slightly lower, although still high. These
 25 results could be **due to gene flow into this area from other HMAs.**" (emphasis added)); AR-
 26 105:SC_6666-6681 (wherein a "Genetic Analysis for the South Stone Cabin" confirmed the
 mixing of wild horses within the area, stating at SC_6670 that "Genetic variability of this herd in
 general is on the high side but there is a high percentage of variation that is at risk. As well,
 heterozygosity levels and number of alleles have declined quite a [bit] since 2012. The levels of
 allelic diversity are lower also, although still high. **The difference could be due to sampling the
 entire area of the HMA in previous years compared to where the horses came from within
 the HMA this time.**" (emphasis added")).

10 AR-42:SC_1328-1342 (2022, relating to the Hunts Canyon Allotment); AR-43:SC_1343-1417
 (2022, relating to the Stone Cabin Allotment); *see also* AR-78:SC_6167-73 (Memorandum dated
 4-29-2021 by *Intermountain Range Consultants* as to "End of Season Utilization" within Stone
 Cabin, Hunts Canyon, Willow Creek Allotments in 2017-2022).

1 conditions, BLM ... should consider removing wild horses to the low AML (or lower) on a
2 continuing annual basis for a number of years. AR-46:SC_1421.

3 32. 2022 DEA: On October 24, 2022, Defendants issued for public comment the Stone
4 Cabin Complex Wild Horse Gather Plan, Preliminary Environmental Assessment, DOI-BLM-NV-
5 B020-2023-0005-EA (“2022 DEA”). AR-49:SC_1642-1791. This 2022 DEA speaks for itself,
6 though for purposes of this Complaint, the “Purpose and Need” of the 2022 DEA was stated by
7 the Defendants to be as follows:

8 The purpose of the Proposed Action is to gather and remove excess wild horses
9 from within and outside of the Stone Cabin Complex and to reduce the wild horse
population growth rates to achieve and maintain established AML.

10 The need for the action is to prevent undue or unnecessary degradation of the public
11 lands associated with excess wild horses, and to restore a TNEB and multiple-use
12 relationship on public lands, consistent with the provisions of Section 1333(b) of
the WFRHBA.

13 AR-49:SC_1649.

14 33. The 2022 DEA considered and assessed three (3) alternatives, i.e., Alternative A -
15 Proposed Action Alternative, AR-49:SC_1652-58, Alternative B - Gather & Removal without
16 Fertility Control Treatments Alternative, *Id.* at 1658; and Alternative C - No Action Alternative,
17 *Id.* at 1663. The 2022 DEA also considered and assessed several “Management Actions
18 Common to Alternatives A, and B.” *Id.* at 1658-63. The 2022 DEA also considered but
19 eliminated from further consideration several other Alternatives. *Id.* at 1663-68.

20 34. Alternative A – Proposed Action Alternative stated in part in the 2022 DEA the
21 following:

22 The Proposed Action (Alternative A) would involve three distinct types of management
23 activities over the 10-year life of the plan:

24 1. Initially, gather and remove excess wild horses to achieve low AML within the proposed
gather area either in a single first gather or with a follow-up gather(s) if necessary because
25 all excess animals could not be captured and removed in a single gather. Based on BLM’s
experience over the past decades, there are a number of factors that can affect BLM’s
ability to achieve AML with a single first gather, including: that gathers typically achieve

1 less than a 100% gather efficiency (i.e., all wild horses in the herd cannot be gathered or
 2 observed to determine how many remain in an HMA since wild horses evade capture or
 3 remain hidden from view during a helicopter gather); the likely population undercount can
 4 result in additional excess wild horses being identified in a follow-up inventory even when
 5 the targeted numbers of estimated excess wild horses have been removed; weather
 6 conditions that may impede achieving the targeted removal numbers during gather
 7 operations, and limited contractor availability among other factors. For this reason, if AML
 8 cannot be achieved through a single first gather, a follow-up gather(s) may be necessary to
 9 achieve low AML.

10 2. Over the 10-year period, apply population growth suppression (fertility control)
 11 measures, including administering booster doses, to gathered and released horses over
 12 multiple gathers, along with sex ratio adjustment, to slow population growth and maintain
 13 the wild horse population within AML to allow for resource recovery and reduce the
 14 number of excess animals that would have to be removed from the public range over time.

15 3. Over the 10-year period, manage for a population that remains within AML by
 16 conducting additional/maintenance gathers after the initial gather(s) to bring wild horse
 17 population back to low AML if the population grows to again exceed AML during the 10-
 18 year plan life after low AML was achieved, in order to provide a sufficient period of time
 19 for degraded range resources to recover. * At the current population size, if a single gather
 20 were to be immediately implemented to reach low AML, the BLM would need to gather
 21 and remove approximately 689 excess wild horses within the complex. However, the wild
 22 horse population grows each year and if an initial gather is delayed, or if multiple gathers
 23 are necessary to achieve low AML because all excess animals could not be captured and
 24 removed in a single gather, the number of excess wild horses needing gather and removal
 25 to achieve low AML would be higher. All three components of the Proposed Action would
 26 allow BLM to achieve management goals and objectives of attaining a herd size that will
 not exceed AML and that will result in a TNEB on the range as required under the
 WFRHBA.

17 It is expected that gather efficiencies and other factors discussed above, **as well as off-
 18 range corral space availability** may not allow for the attainment of low AML during a
 19 single initial gather (i.e., if not enough horses are successfully captured and removed to
 20 reach low AML). If low AML is not achieved with the first gather, the BLM Tonopah Field
 21 Office would return to the complex to remove remaining excess horses above low AML in
 22 one or, if necessary, more follow-up gathers. Multiple gathers will be used over a 10-year
 23 period to gather a sufficient number of wild horses as to implement (in a phased manner)
 24 the population control component of the Proposed Action, which includes sex ratio
 25 adjustment (so that the herd may be composed of as many as 60% males and as few as 40%
 26 females) and fertility control treatments (PZP vaccines, GonaCon-Equine, IUDs, or
 Gelding) for wild horses remaining in the complex. Because continued management of the
 Complex's wild horse population at AML over the 10-year period is necessary to allow
 degraded range resources to recover and to achieve a TNEB, BLM would maintain the
 population at AML through additional removals (during follow-up gathers) if the
 population should again exceed AML after low AML is reached. Prioritization of excess
 wild horse removals would be as follows: from areas where public health and safety issues
 have been identified, private land and non-HMA, areas where resource
 degradation/deficiency has been identified, and within the complex areas as needed to
 reach and maintain AML. Selective removal procedures would prioritize removal of

1 younger excess wild horses after achieving AML within the complex, and allow older, less
 2 adoptable, wild horses to be released back to the complex. BLM could begin implementing
 3 the population control components (PZP vaccines, GonaCon, IUDs, Gelding) of this
 4 alternative as part of the initial gather if gather efficiencies allow. To help improve the
 5 efficacy and duration of fertility control vaccines, mares could be held for an additional 30
 6 days and given a booster shot prior to release.
 7

8 Population inventories and routine resource/habitat monitoring would continue to be
 9 completed every two to three years to document current population levels, growth rates,
 10 and areas of continued resource concerns (horse concentrations, riparian impacts, over-
 11 utilization, etc.). Genetic diversity monitoring would take place as part of gather activities
 12 (BLM 2010). The BLM Tonopah Field Office does not have the discretion to decide when
 13 and how much funding out of the BLM's total national budget will be allocated toward the
 14 proposed action in any given year, and there are tens of thousands of excess wild horses
 15 that BLM has determined ought to be removed across dozens of HMAs. The timing and
 16 amount of funding from the national BLM budget for this action is outside the scope of
 17 this decision. Therefore, **funding limitations and competing national priorities may
 18 impact the timing and ability to gather and conduct population control components
 19 of the Proposed Action.**

20 AR-49:SC_1652-54 (emphasis added).

21 35. As quoted in paragraph (34), and as relevant to this Complaint, Alternative A –
 22 Proposed Action Alternative in the 2022 DEA included two (2) *conditions to actual*
 23 *implementation*: (1) Defendants conditioned implementation upon “off-range corral space
 24 availability”; and (2) Defendants conditioned implementation upon “funding limitations and
 25 competing national priorities.” AR-49:SC_1653-54.

26 36. The 2022 DEA provided no rationale for such *conditions*, except perhaps the
 27 Defendants’ statement that “[t]he timing and amount of funding from the national BLM budget
 28 for this action is outside the scope of this decision.” AR-49:SC_1653. However, such statement
 29 is contradicted by the “Purpose and Need” in the 2022 DEA, AR-49:SC_1649, and by *other*
 30 statements in the 2022 DEA relative: (a) to the “No Action Alternative,” AR-49:SC_1663;¹¹ (b)

21 ¹¹ AR-49:SC_1663 states that “Although the **No Action Alternative does not comply with the**
 22 **WFRHBA of 1971 and does not meet the purpose and need for the action in this EA**, it is
 23 included as a basis for comparison with the Proposed Action.

24 Under the No Action Alternative, a gather to remove excess wild horses would not occur.
 25 There would be no active management to control the size of the wild horse population or to bring
 26 the wild horse population to AML. The current wild horse population would continue to increase
 27 at a rate of 14%-22.7% per year (Appendix III). Within three years, the wild horse population
 28 could exceed 1100 animals, or nearly three times AML. Increasing numbers of excess wild

1 to the “Gathering the Complex to the High end of AML,” AR-49:SC_1667-68;¹² and (c) to the
 2 “Gathering the Complex after the Completion of a Rangeland Health Assessment,” AR-
 3 49:SC_1670.¹³

4 37. Public Comments, including by the Plaintiffs, NDOW, and Eureka County,
 5 Nevada: After the 2022 DEA was issued, Defendants released it for public comment. Defendants
 6 thereafter received comments to the 2022 DEA between November 6, 2022, and December 2,
 7 2022. *See* AR-50:SC_1792 to AR-78:SC_6173. These comments speak for themselves but
 8 include comments from the Plaintiffs dated November 23, 2023, AR-75:SC_4940, and dated
 9 December 2, 2022, AR-78:SC_6156-6173, as well as from the State of Nevada, Department of
 10 Wildlife

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14 horses will result in the continued deterioration of rangeland resources within the complex, wild
 15 horse health will deteriorate, and public safety concerns will increase along heavily traveled
 16 roads. There would also be an increase in emergency actions necessary to address the
 17 overpopulations of wild horses and limited water/forage resources in the complex.” Emphasis
 added.

18 ¹² AR-49:SC_1667-68 states “**This alternative would not meet the Purpose and Need for this**
EA which it is to remove excess wild horses from within and outside the Stone Cabin complex,
 19 to reduce the wild horse population growth rates to manage wild horses within established AML
 20 ranges, and to minimize the frequency of gathers needed to remove excess wild horses.

21 **The need for the action is to prevent undue or unnecessary degradation of the public**
lands associated with excess wild horses, to restore a TNEB and multiple use relationship
on public lands, consistent with the provisions of Section 1333(b) of the 1971 WFRHBA.
 22 For these reasons, this alternative was eliminated from further consideration.” Emphasis added.

23 ¹³ AR-49:SC_1670 states that “**the Alternative would not meet the Purpose and Need for**
action identified in Section 1.2: ‘to achieve and maintain the AML through removal of excess

wild horses from within and outside of the HMA boundaries, and to reduce the population
 24 growth rate to prevent undue or unnecessary degradation of the public lands, and protect
 25 rangeland resources from deterioration associated with excess wild horses within the HMAs, **and**
 26 **to restore a TNEB and multiple use relationship on the public lands consistent with the**
provisions of Section 1333 (a) of the 1971 WFRHBA.” Emphasis added.

1 (“NDOW”) dated November 17, 2022, AR-52:SC_1795-1796,¹⁴ and Eureka County Board of
2 Commissioners’ (“Eureka County”) dated November 18, 2022, AR-65:SC_4732-4736.¹⁵

3 38. Plaintiffs’ comments dated December 2, 2022, objected to the *conditions to actual*
4 *implementation* in the 2022 DEA, as noted above in paragraph (35). Specifically, the Plaintiffs
5 stated that:

6 Alternatives A and B are not in conformance with either the Wild Free-Roaming
7 Horses and Burros Act of 1971, or the Tonopah Resource Management Plan.

8 The WFRHBA does not condition the removal of excess horses depending on “off-
9 range corral space” or “funding limitations and competing national priorities”, as
10 the PEA appears to do at page 11. While the action of reducing excess wild horses
to within AML is in conformance with the Act, the unnecessary delay in BLM
becoming compliant with the Act – perhaps only in the 10th year (if then) - is not
in conformance with the Act.

11 Likewise, the Tonopah RMP does not condition the removal of excess wild horses
12 upon “off-range corral space” or “funding limitations and competing national
13 priorities”, as the PEA appears to do at page 11. While the action of reducing excess
14 wild horses to within AML is in conformance with the RMP, the unnecessary delay
in BLM becoming compliant with the RMP – perhaps only in the 10th year (if then)
- is not in conformance with the RMP, or the sage-grouse Amendments to the RMP.

15 AR-78:SC_6159.

16 ¹⁴ See AR-52:SC_1795 (wherein NDOW stated that “We understand the Stone Cabin Complex
17 includes the Stone Cabin and Saulsbury Herd Management Areas and the proposed gather area
18 represents the ~542,724 acres of these HMAs and ~343,457 acres outside of HMA boundaries in
19 the Ralston, Hunts Canyon, and Monitor grazing allotments. We also understand the estimated
20 population size of wild horses for the HMAs far exceeds respective appropriate management
21 levels (AMLS) and the wild horses leaving and remaining outside of the HMAs indicate
22 insufficient range conditions within the Complex for sustaining a thriving ecological
balance with other multiple use values including the ability for BLM making progress
towards meeting Standards for Rangeland Health in accordance with the Mojave-Southern
Great Basin RAC. Obviously, the situation has serious implications for wildlife and habitat
quality and availability.” (emphasis added)).

23 ¹⁵ See AR-65:SC_1795 (wherein Eureka County stated that “**Relieving the severe**
24 **overpopulation of wild horses is imperative to improving range conditions and attaining**
25 **multiple-use objectives.** In the absence of active herd management, vegetation communities
have been badly damaged, herd health is poor, wildlife habitat has been substantially reduced,
livestock operations have suffered major economic losses, and hunting and recreational
opportunities have been compromised. We cannot express strongly enough the importance of
reaching and maintaining wild horse herd populations at appropriate management levels (AML)
over the long-term and keeping horses within the Complex.” (emphasis added)).

1 39. 2023 DR, 2023 FONSI, 2023 FEA: Several months later, and even after
 2 collecting *further* population data as of March 1, 2023, on April 11, 2023, Defendants issued
 3 their 2023 DR, AR-79:SC_6174-6177, their 2023 FONSI, AR-80:SC_6178-6181, and their 2023
 4 FEA, AR-81:SC_6182-6387. These documents speak for themselves, though for purposes of this
 5 Complaint, the 2023 DR: (1) selected and implemented Alternative A - Proposed Action
 6 Alternative in the 2023 FEA, AR-79:SC_6175, *see also* AR-81:SC_6193-99; and (2) did not
 7 explicitly include any of the *conditions to actual implementation* noted in paragraph (35), *see*
 8 *also* AR-79:SC_6174-77, *see also* AR-80:SC_6178-81 (wherein the 2023 FONSI also did not
 9 explicitly include any of such *conditions* noted in paragraph (35)).

10 40. 2023 FEA: As to the 2023 FEA, the 2023 FEA had the *same* “Purpose and Need”
 11 as the 2022 DEA, as quoted above in paragraph (32). *Compare* AR-49:SC_1649 and AR-
 12 81:SC_6189.

13 41. In addition, as to the 2023 FEA, the 2023 FEA considered and assessed three (3)
 14 alternatives similar to those considered and assessed in the 2022 DEA. *See* a comparison
 15 between AR-81:SC_6193-99 and AR-49:SC_1652-58.

16 42. Notwithstanding the Plaintiffs’ comments objecting to the *conditions to actual*
 17 *implementation* noted in paragraph (35), Defendants carried-forward from the 2022 DEA into the
 18 2023 FEA such *conditions*, i.e., “off-range corral space availability,” AR-81:SC_6194, and
 19 “funding limitations and competing national priorities,” *Id.*

20 43. However, it should be noted that the 2023 FEA abandoned the claimed rationale
 21 for such *conditions*, removing from the 2023 FEA the previous purported rationale language in
 22 the 2022 DEA, as illustrated as follows:

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1	Language in the 2023 FEA	Language in the 2022 DEA
2 3 4 5 6 7 8 9 10 11 12 13	Population inventories and routine resource/habitat monitoring would continue to be completed every two to three years to document current population levels, growth rates, and areas of continued resource concerns (horse concentrations, riparian impacts, over-utilization, etc.). Periodic genetic diversity monitoring would take place as part of gather activities (BLM 2010). Funding limitations and competing national priorities may impact the timing and ability to gather and conduct the population control components of the Proposed Action.	Population inventories and routine resource/habitat monitoring would continue to be completed every two to three years to document current population levels, growth rates, and areas of continued resource concerns (horse concentrations, riparian impacts, over-utilization, etc.). Genetic diversity monitoring would take place as part of gather activities (BLM 2010). The BLM Tonopah Field Office does not have the discretion to decide when and how much funding out of the BLM's total national budget will be allocated toward the proposed action in any given year, and there are tens of thousands of excess wild horses that BLM has determined ought to be removed across dozens of HMAs. The timing and amount of funding from the national BLM budget for this action is outside the scope of this decision. Therefore, funding limitations and competing national priorities may impact the timing and ability to gather and conduct population control components of the Proposed Action.
14 15	AR-81:SC_6194	AR-49:SC_1653-54 (emphasis added, as to the rationale language in the 2022 DEA, yet then removed in the 2023 FEA).

Based thereon, there is no stated rationale for the *conditions to actual implementation* within the 2023 FEA, or within the 2023 DR and the 2023 FONSI. In fact, there is rationale in the 2023 FEA that is contrary to such *conditions*. The 2023 FEA, as to "Gathering the Complex after the Completion of a Rangeland Health Assessment," stated:

This alternative would not be in conformance with 16 USC 1333 (b)(2), which, upon determination of excess, directs the secretary to immediately remove excess animals from the range so as to achieve appropriate management levels. 16 USC 1333 (b)(2) directs the secretary to make an excess determination based on the basis of all information currently available, and does not include language that would allow for a delay of this immediate removal in order to collect any type of information.

AR-81:SC_6209.

44. BLM's Land Use Plan: Like the 2022 DEA, the 2023 FEA included a "Land Use Plan Conformance and Consistency with Other Authorities" statement. AR-81:SC_1649-52.

1 However, such a statement included no legal justification for the conditions noted in paragraph
2 (42).

3 45. Final Agency Action: The 2023 DR stated that the “decision is effective
4 immediately pursuant to 43 CFR 4770.3(c).” AR-79:SC_6175.

5 46. The 2022 DR also stated that it was administratively appealable to the U.S.
6 Department of the Interior, Office of Hearings and Appeals, Board of Land Appeals (“IBLA”),
7 and that it was also subject to being stayed (aka enjoined) pending any administrative appeal to
8 the IBLA. AR-79:SC_6176-77.

9 47. On May 11, 2023, Plaintiffs filed their administrative Notice of Appeal of the
10 2023 DR, the 2023 FONSI, and the 2023 FEA to the IBLA. The administrative appeal did not
11 wholly challenge the 2023 DR, the 2023 FONSI, or the 2023 FEA. Instead, the administrative
12 appeal challenged the deferral of the *actual* implementation of 2023 DR, inclusive of the
13 conditions allowing such deferral of the *actual* implementation stated in paragraph (42).

14 48. On June 22, 2023, Defendants filed with the IBLA and the Plaintiffs the
15 Administrative Record.

16 49. On August 25, 2023, Plaintiffs filed their Statement of Reasons in support of their
17 administrative appeal with the IBLA, and the Plaintiffs also filed their Petition for Partial Stay to
18 stay (aka enjoin) the effectiveness of the Defendants’ reliance upon the conditions stated in
19 paragraph (42) which deferred (and continue to defer) the *actual* implementation of the 2023
20 DR.

21 50. On September 29, 2023, the IBLA denied the Petition for Partial Stay. Such
22 denial continued to make the 2023 DR operable and effective, inclusive of the conditions stated
23 in paragraph (42), which allowed the Defendants to continue to indefinitely defer the *actual*
24 implementation of the 2023 DR.

25 51. Thereafter, contemporaneous with filing this Complaint, Plaintiffs dismissed their
26 administrative appeal before the IBLA because the agency action was final.

52. The 2023 DR, 2023 FONSI, and 2023 FEA are final agency action per 5 U.S.C. § 704, given the 2023 DR stated on its face that it was “effective immediately pursuant to 43 CFR § 4770.3(c)”, AR-79:SC_6175, and given the Plaintiffs, through agency rule, to make the 2023 DR, 2023 FONSI, and 2023 FEA inoperative pending their administrative appeal was denied by the IBLA via an Order dated September 29, 2023. *See* 43 C.F.R. § 4.21(c) (10-1-2022 Edition) (wherein “No decision which at the time of its rendition is subject to appeal to … an Appeals Board shall be considered final so as to be agency action subject to judicial review under 5 U.S.C. 704, unless a petition for a stay of decision has been timely filed and the decision being appealed has been made effective in the manner provided in paragraphs (a)(3) or (b)(4) of this section or a decision has been made effective pending appeal pursuant to paragraph (a)(1) of this section or pursuant to other pertinent regulation.”)

CLAIM FOR RELIEF
VIOLATION OF THE *WILD AND FREE-ROAMING HORSES AND BURRO ACT*

53. Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs 1 through 52.

54. While the standard of review of an agency’s interpretation of a statute is governed by *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984) (“*Chevron*”), *Chevron* or what is commonly known as the “*Chevron Standard*” is currently subject to review the U.S. Supreme in *Loper Bright Enterprises, et al. v. Gina Raimonda, Secretary of Commerce, et al.*, No. 22-451. See Docket for 22-451 (supremecourt.gov) (last checked on 10/11/2023 @ 9:01 A.M.). The Order dated May 1, 2023, stated that “Petition GRANTED limited to Question 2 presented by the petition.” The underlying “Question 2” in the Petition for Writ of Certiorari stated: “2. Whether the Court should overrule *Chevron* or at least clarify that statutory silence concerning controversial powers expressly but narrowly granted elsewhere in the statute does not constitute an ambiguity requiring deference to the agency.”

Loper Bright Enterprises, et al., No. 22-451, Petition for Writ of Certiorari dated November 10,

1 2022, at page ii.

2 55. The pending Writ of Certiorari in *Loper Bright Enterprises, et al.*, No. 22-451,
 3 will likely be decided by the Supreme Court with potential Oral Arguments in winter 2023, and
 4 with potential Opinion in spring 2024. Any Opinion by the Supreme Court may impact the
 5 “Standard of Review – Interpretation of a Statute” subject to this Complaint; namely, *Wild and*
 6 *Free Roaming Horses & Burro Act*, 16 U.S.C. §§ 1331-1340 (“WFRHBA”).

7 56. In the meantime, and absent further direction by the U.S. Supreme Court in *Loper*
 8 *Bright Enterprises*, *Chevron* prescribes a two-part test to follow when faced with reviewing an
 9 agency’s construction of a statute which it administers. *Chevron*, 467 U.S. at 842-43. Step one is
 10 “whether Congress has directly spoken to the precise question at issue.” *Id.* at 842. Step two is
 11 “if the statute is silent or ambiguous with respect to the specific issue,” whether the agency’s
 12 interpretation of the statute “is based on a permissible construction of the statute.” *Id.*

13 57. Congress has “directly spoken to the precise question at issue” subject to this
 14 Complaint.

15 58. Congress enacted the WFRHBA to protect wild free-roaming horses and burros as
 16 an integral part of the natural areas where they were found. 16 U.S.C. § 1331; *see generally In*
 17 *Defense of Animals v. U.S. Dep’t of the Interior*, 751 F.3d 1054, 1061-62 (9th Cir. 2014).

18 59. In 1978, Congress amended the WFRHBA to “facilitate the humane adoption or
 19 disposal of excess wild free-roaming horses and burros which, because they exceed the carrying
 20 capacity of the range, pose a threat to their own habitat, fish, wildlife, recreation, water and soil
 21 conservation, domestic livestock grazing, other rangeland values.” 43 U.S.C. § 1901(a)(6).
 22 Under the 1978 amendments, Defendants are responsible for managing wild horses “at the
 23 minimal feasible level,” and “in manner that is designed to achieve and maintain a natural
 24 balance” between wild horse and burro populations, wildlife, livestock, and vegetation, and to
 25 protect the range from “the deterioration associated with overpopulation” of wild horses and
 26 burros on the public lands. 16 U.S.C. §§ 1333(a), 1333(b)(2); *see also* 43 C.F.R. § 4710.4 (10-1-

1 2022 Edition); *Dahl v. Clark*, 600 F.Supp. 585, 593-94 (D. Nev. 1984); *Michael Blake*, 138
 2 IBLA 170, 177 (1997).

3 60. “Excess animals” is a term defined by statute as wild free-roaming horses or
 4 burros which either have been removed or must be removed from an area “in order to preserve
 5 and maintain a thriving natural ecological balance and multiple-use relationship in that area.” 16
 6 U.S.C. § 1332(f).

7 61. To comply with the foregoing statutory obligations, the statute’s removal
 8 provision envisioned a two-step decision-making process: First, Defendants are to determine
 9 whether any overpopulation exists, and second, Defendants are to determine whether action is
 10 necessary to remove excess animals. *DeLong Ranches, Inc.*, IBLA 2012-235 (IBLA Order dated
 11 Sept. 16, 2014) at 13; *see also American Wild Horse Campaign*, 198 IBLA 1, 2 (2022); *State of*
 12 *Wyoming v. United States Department of Interior*, 839 F.3d. 938, 944-945 (10th Cir. 2016). This
 13 two-step process “may determine that action is *not* necessary to remove these horses exceeding
 14 the AML and, alternatively, it may determine that such action is necessary and prescribe a
 15 management plan implementing a combination of actions and methods.” *DeLong Ranches, Inc.*
 16 at 13-14 (emphasis added).

17 62. Here, in the exercise of their discretion, Defendants conformed to the two-step
 18 decision-making process.

19 63. As to step one, Defendants made their requisite determination that an
 20 overpopulation existed. This is/was demonstrated by the “Rationale” in the 2023 DR, AR-
 21 79:SC_6175-76, and by language in the 2023 FEA, stating:

22 Based upon all current information available at this time, the BLM has determined
 23 that at least 689 excess wild horses above the low end of AML are currently present
 24 in the Stone Cabin Complex. Census flights have confirmed that additional wild
 25 horses reside outside of HMA boundaries in the area identified as the Stone Cabin
 Complex gather area. These excess wild horses need to be removed in order to
 achieve the established AML, restore a thriving natural ecological balance (TNEB)
 and prevent further degradation of rangeland resources.

26 AR-81:SC_6189.

1 64. As to step two, Defendants made their requisite determination that action is
 2 necessary to remove the excess animals. This is/was demonstrated by the “Decision” in the 2023
 3 DR, prescribing a wild horse management plan “to implement the Proposed Action (Alternative
 4 A)” as described in the 2023 FEA, adding that such “proposed action is consistent with the land
 5 use plans and would allow for achievement of management objectives in the Stone Cabin
 6 Complex,” and further adding that the Defendants “**would gather and remove excess wild**
 7 **horses within and outside of the Stone Cabin Complex to achieve AML (approximately 689**
 8 **as of March 2022) through an initial gather or follow-up gather(s) if needed, and**
 9 **administrated or booster population control measures to gathered and released horses**
 10 **through subsequent maintenance gathers over a period of ten years ... [which] would allow**
 11 **BLM to achieve management goals and objectives of attaining a herd size that is at the low**
 12 **range of AML, reducing wild horse population growth rates, achieve a thriving natural**
 13 **ecological balance on the range as required under the WFRHBA, and to allow for recovery**
 14 **of degraded rangeland resources.”** AR-79:SC_6175 (emphasis added).

15 65. Notwithstanding, and contrary to the explicit language in the WFRHBA,
 16 Defendants conditioned the actual implementation of its management action upon “off-range
 17 corral space availability,” AR-81:SC_6194, and upon “funding limitations and competing
 18 national priorities,” *id.* (hereinafter referred to as “*Off-site Conditions*”). These *Off-site*
 19 *Conditions* were stated as part of the Proposed Action (Alternative A) in the 2023 FEA, *id.*,
 20 which was selected and implemented by the 2023 DR, AR-79:SC_6175.

21 66. Defendants flip-flop on both sides of the fence to excuse their deferral before the
 22 IBLA. On one side of the fence, Defendants stated that the Plaintiffs “offer no evidentiary
 23 support of their claim that the BLM relies on those off-site conditions to indefinitely defer the
 24 actual implementation of any portion of the [2023 DR].” BLM’s Response dated September 22,
 25 2023, at 7:11-13. On the other side of the fence, Defendants stated the 2023 FEA “explains that
 26 the population control activities ... may be subject to ... factors,” *id.* at 7:13-14, such, as

1 “Funding limitations and competing national priorities may impact the timing and ability to
 2 gather and conduct the population control components of the Proposed Action,”” *id.* at 7:14-16
 3 (hereinafter referred to as “*Other Off-site Conditions*”). However, as alleged below, whether the
 4 reason for the deferral is the *Off-site Conditions* or the *Other Off-site Conditions*, neither are
 5 legally authorized to indefinitely defer the implementation of the wild horse management plan,
 6 including the gather and removal of the excess wild horses within and outside of the Stone Cabin
 7 Complex to achieve AML through an initial gather. *See AR-79:SC_6175.*

8 67. None of these conditions are permitted under the WFRHBA or under the WFRHBA
 9 regulations. “[D]iscretion evaporates once BLM determines ‘that action is necessary to remove
 10 excess animals,’ 16 U.S.C. § 1333(b)(2).” *Western Rangeland Conservation Association v. Zinke*,
 11 265 F.Supp.3d 1267, 1282 (D. Utah 2017).

12 68. The WFRHBA, 16 U.S.C. §§ 1331-1340, and the WFRHBA regulations, 43 C.F.R.
 13 Part 4700 (10-1-2022 Edition), do not disclose that the *Off-site Conditions* or *Other Offsite*
 14 *Conditions* can defer the actual implementation of the Act or the regulations.

15 69. The WFRHBA is explicit in Section 1333(b)(2) as to the directions to the Secretary
 16 to “**immediately remove** excess animals from the range so as to achieve appropriate management
 17 levels” (emphasis added). None of these directions include authority to condition the immediate
 18 removal of excess animals. *See 43 C.F.R. § 4720.1 (10-1-2022 Edition)* (“Upon examination of
 19 current information and a determination by the authorized officer that an excess of wild horses or
 20 burros exists, **the authorized officer shall remove the excess animals immediately in the**
 21 **following order.** (a) Old, sick, or lame animals shall be destroyed ...; (b) Additional excess
 22 animals for which an adoption demand by qualified individuals exists shall be humanely captured
 23 and made available for private maintenance ...; and (c) Remaining excess animals for which no
 24 adoption demand by qualified individuals exists shall be destroyed ...” (emphasis supplied)).

25 70. Here, as alleged above, Defendants exercised their discretionary authority in their
 26 2023 DR. This authority prescribed an action that “would allow BLM to achieve management

1 goals and objectives of attaining a herd size that will not exceed AML and that will result in a
 2 TNEB on the range as required under the WFRHBA,” AR-81:SC_6194, yet the Defendants then
 3 unlawfully conditioned such action via the *Off-site Conditions* and/or the *Other Off-site*
 4 *Conditions*; violating 16 U.S.C. §§ 1333(b)(1), 1333(b)(2), and their implementing regulations,
 5 i.e. 43 C.F.R. § 4720.1.

6 71. Defendants cited neither in their 2023 DR, 2023 FEA nor in their filings before
 7 the IBLA to any law to support the *Off-site Conditions* and/or the *Other Off-site Conditions*. In
 8 fact, a case out of the U.S. District Court, District of Utah, entitled *Western Rangeland*
 9 *Conservation Association v. Zinke*, 265 F.Supp.3d 1267 (D. Utah 2017), actually supports
 10 against such conditions.

11 72. *Western Rangeland Conservation Association* involved a situation wherein a
 12 party challenged BLM’s failure to immediately gather and remove excess wild horses upon the
 13 public lands. While the case ultimately turned on the “unreasonable delay” standard under the
 14 *Administrative Procedure Act*, 5 U.S.C. § 706(1), as opposed to an “arbitrary and capricious”
 15 standard under the *Administrative Procedure Act*, 5 U.S.C. § 706(2), as is the case here, the case
 16 grappled with the authority of BLM to condition the immediate gather and removal of excess
 17 wild horses under the WFRHBA. The court in *Western Rangeland Conservation Association*
 18 resolved the struggle by distinguishing BLM’s authority based upon *on-site* gather conditions (to
 19 which the court found BLM to have “some discretionary space” under the WFRHBA) and
 20 BLM’s authority based upon *off-site* gather conditions (to which the court found BLM to have
 21 very little discretionary space under the WFRHBA). In this regard, the court stated:

22 Based on these practical realities, the court cannot interpret Section Three
 23 to require removal of excess wild animals without any intervening delay -- such
 24 an interpretation would contravene the ultimate purposes of the WHA by forcing
 25 BLM to act recklessly and without regard for the continuing viability or humane
 26 treatment of creatures it is specifically tasked with preserving. ... Section Three’s
 mandate to “immediately remove” must therefore include some discretionary
 space in which BLM may plan and execute safe, efficient, and effective removals
 consistent with the broader purposes of the WHA and in compliance with other
 statutory duties.

1 **At the same time, the court cannot accept BLM's contention that the**
 2 **"pace and timing" of removals are entirely discretionary. ... The term**
 3 **"immediately" must mean something -- its presence in the statute necessarily**
 4 **places some temporal limits on any discretion BLM has to plan and execute**
 5 **removal actions.** The D.C. Circuit has explained that the term "immediately"
 6 indicates that Congress desired that "excess horses ... be removed expeditiously"
 7 and decided that "prompt action was needed to redress ... imbalance" in wild
 8 horse populations on public lands. ... Indeed, the statute indicates that "immediate
 9 []" removal action is required "so as to restore a thriving natural ecological
 10 balance to the range[] and [to] protect the range from the deterioration associated
 11 with overpopulation." ... **Any unnecessary delay or lack of urgency in**
 12 **reducing the population to within AML would contravene these purposes by**
 13 **allowing excess wild horses to persist, propagate, and consume an imbalance**
 14 **of already scarce resources. With the viability of the range and the wild**
 15 **horses themselves in immediate peril as a result of overpopulation, BLM**
 16 **cannot postpone action to remove excess wild horses once it determines that**
 17 **such action is necessary.** To the extent that practical realities preclude truly
 18 "immediate" removal, BLM may only delay necessary removal actions insofar as
 19 delay is necessary to plan and execute the actions safely and effectively. Proper
 20 planning and execution would of course account for many of the practical realities
 21 that BLM has identified, including due analysis of circumstances on the ground,
 22 compliance with NEPA and FLPMA, and retention of experienced contractors.

12 **In sum, once BLM determines that an overpopulation exists in a given**
 13 **area and action is necessary to remove that overpopulation, Section Three**
 14 **demands that BLM address the overpopulation through removal and that**
 15 **the agency begin and complete removal as soon as logically possible.**

15 *Western Rangeland Conservation Association*, 265 F.Supp.3d at 1284-1285 (emphasis added,
 16 internal citations omitted, and internal footnotes omitted).

17 73. There is a clear distinction between on-site gather conditions and off-site gather
 18 conditions. On the one hand, as to on-site gather conditions, Defendants maintain "some
 19 discretion space" under Section 3 of the WFRHBA to ensure that the actual gather and removal
 20 are planned and executed on-the-ground in a safe, efficient, and effective manner. *Western*
 21 *Rangeland Conservation Association*, 265 F.Supp.3d at 1284. On the other hand, as to off-site
 22 gather conditions, Defendants maintain little discretion given the temporal limits under Section 3
 23 of the WFRHBA to actually remove the excess animals from the public lands itself. *See Western*
 24 *Rangeland Conservation Association*, 265 F.Supp.3d at 1285 (wherein the District Court stated
 25 that "[t]o the extent that practical realities preclude truly "immediate" removal, BLM may only

26 ///

1 delay necessary removal actions insofar as delay is necessary to plan and execute the actions
 2 safely and effectively,” i.e., the on-site gather mechanisms).

3 74. In addition, the *Off-site Conditions*, i.e., “off-range corral space availability,” AR-
 4 81:SC_6194, and “funding limitations and competing national priorities,” *id.*, were actually
 5 considered and addressed by the court in *Western Rangeland Conservation Association* as not
 6 being within the Defendants’ discretionary space, stating:

7 ... the defending parties suggest that BLM has wide discretion in how to
 8 implement Section Three’s mandate and that the current ... approach to wild
 9 horse management fulfills BLM’s statutory obligation to “immediately remove”
 10 excess animals: “Because the [WHA] imposes no specific timetable for removing
 11 horses after [BLM] has made the required removal determinations, especially
 12 when taking into account all the complex and competing factors surrounding
 13 removal actions, there has been no ‘delay’ in this case ...” ... The court must
 14 reject BLM and Defendant-Intervenors’ arguments on this point.

15 BLM’s ... approach to removal fails to fulfill the agency’s Section Three duty to
 16 “immediately remove” excess animals in at least two fundamental ways. First, the
 17 “phased-in” approach prioritizes gradual removal and other management
 18 techniques over prompt removal to within AML. As explained above, Section
 19 Three unequivocally requires BLM to address overpopulations through immediate
 20 removal of excess animals once the agency makes certain triggering
 21 determinations regarding an area of the public lands. Having made the requisite
 22 determinations in the areas at issue, BLM cannot choose to address the identified
 23 overpopulation through gradual removals and the application of
 24 immunocontraceptives and adjustment of sex ratios -- the agency *must* address the
 25 overpopulation through immediate removal.

26 Second, the ... approach contemplates gradual, rather than “immediate[]”
 1 removal of excess animals. Though Section Three imposes no specific timetable
 2 for necessary removals, the statute clearly demands prompt removal and forbids
 3 unnecessary delay. BLM urges that a six-to-ten-year delay is necessary “due to
 4 **limited resources** [and] **competing removal needs** across [ten] western states,”
 5 ..., but such broad administrative concerns cannot erase Section Three’s demand
 6 for urgency. While it is clear that Section Three’s mandate to “immediately
 7 remove” excess wild horses must account for the practical realities of the removal
 8 process, the fundamental nature of BLM’s statutory duty cannot be altered by the
 9 **agency’s budgetary constraints**. Here, the six-to-ten-year timetable of the
 10 “phased-in” approach is primarily attributable to these broader administrative
 11 constraints and not to the practical realities of removal. Indeed, BLM
 12 acknowledges that the “phased-in” approach to removal is required because
 13 “[n]ationwide, **short and long term holding space** for excess wild horses
 14 removed from the range is limited.” ... Further, the total numbers of animals
 15 removed over the life of the plan is at least partially contingent on “administrative
 16 factors (**budget**, adoptions, **holding space**, etc.).” ... Such “**administrative**
 17 **factors**” do not give BLM license to redefine their statutory obligation under

1 **Section Three. As explained above, BLM is required by law to remove excess**
 2 **animals to within AML as soon as the actions necessary to complete removal**
 3 **can be safely and effectively carried out.** Removal that occurs gradually over
 nearly a decade does not fulfill that requirement.

4 *Western Rangeland Conservation Association*, 265 F.Supp.3d at 1286-1287 (emphasis added,
 5 internal citations omitted, and internal footnotes omitted).

6 75. It is not disputed that Defendants themselves “determined that excess wild horses
 7 are present on public lands within and outside the boundaries of the Stone Cabin Complex and
 8 that removal of these wild horses to within appropriate management level (AML) is necessary to
 9 achieve a thriving natural ecological balance.” AR-79:SC_6174. This determination demanded --
 10 subject only to the on-site gather conditions (which are included and not disputed in the 2023
 11 FEA, Appendix V., “Gather Operations Standard Operating Procedures”, AR-81:SC_6311-16) --
 12 that Defendants address the overpopulation through the immediate implementation of their wild
 13 horse management plan, inclusive of the initial removal of the excess wild horses in the Complex
 14 to low AML, and not conditioned upon the *Off-site Conditions* and/or the *Other Off-site*
 15 *Conditions*.

16 76. Even the *Western Rangeland* court explicitly noted that the “fundamental nature
 17 of BLM’s statutory duty cannot be altered by the agency’s budgetary constraints,” and that
 18 “‘administrative factors’ do not give BLM license to redefine their statutory obligation under
 19 Section Three” of the WFRHBA. *Western Rangeland Conservation Association*, 265 F.Supp.3d
 20 at 1287.

21 77. Plaintiffs have no other legal remedy for the Defendants to implement their own
 22 wild horse management plan, inclusive of the initial removal of the excess wild horses from the
 23 SCC other than the statutorily prescribed reliance on agency action. *See* 16 U.S.C. § 1334 (“In no
 24 event shall such wild free-roaming horses and burros be destroyed except by the agents of the
 25 Secretary”).

26 / / /

78. Accordingly, Defendants violated their statutory and regulatory obligations under the WFRHBA and the regulations promulgated thereunder to defer (and continue to defer) the *actual* implementation of the 2023 DR, inclusive of any reliance upon the *Off-site Conditions* and upon the *Other Off-site Conditions*, subject only to on-site conditions as the court determines are reasonable and consistent with the WFRHBA and the regulations promulgated thereunder.

79. Wherefore, for the reasons and violations of the WFRHBA alleged in paragraphs 1-78, the 2022 DR constitutes final agency action judicially reviewable by this Court pursuant to 5 U.S.C. § 704, and such agency action must be held unlawful and be set aside to the extent it is applied by the Defendants to defer (and continue to defer) the *actual* implementation of the 2022 DR, inclusive of the *Off-site Conditions* and *Other Off-site Conditions*, in accordance with *Administrative Procedure Act*, 5 U.S.C. § 706(2)(A), (C). Preliminary and/or permanent injunctive relief should be granted to compel the *actual* implementation of the 2023 DR subject only to the on-site conditions as the court determines are reasonable and consistent with the WFRHBA.

PRAYER FOR RELIEF

Plaintiffs request that the Court grant the following relief:

A. Order, declare, and adjudge that the *Off-site Conditions* and *Other Off-site Conditions* in the 2023 DR, 2023 FONSI, and 2023 FEA allowing the deferral (and continued deferral) of the *actual* implementation of the 2023 DR are unlawful and are in violation of WFRHBA and the regulations promulgated thereunder, other than the on-site conditions as the court determines are reasonable and consistent with the WFRHBA and the regulations promulgated thereunder;

B. Issue an order setting aside and vacating the *Off-site Conditions* and *Other Off-site Conditions* in the 2023 DR, 2023 FONSI, and 2023 FEA, other than the on-site conditions as the court determines are reasonable and consistent with the WFRHBA and the regulations promulgated thereunder;

- 1 C. Grant preliminary injunctive relief and permanent injunctive relief to compel the
2 *actual* implementation and continued implementation of the 2023 DR subject only to
3 on-site conditions as the court determines are reasonable and consistent with the
4 WFRHBA and the regulations promulgated thereunder; and
5 D. For such other and further relief as the Court deems just, proper, and equitable,
6 including an award of the Plaintiffs' attorney fees and costs under any applicable law,
7 including the *Equal Access to Justice Act*, 28 U.S.C. § 2412.

8 DATED this 17th day of October, 2023.

9 ***SCHROEDER LAW OFFICES, P.C.***

10 By: /s/ Therese A. Ure Stix

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